

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EARL LYNN BAGLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C05-1161C

ORDER

This matter comes before the Court on Petitioner's "Motion for Objections to Order and to Appeal Order" (Dkt. No. 39), which the Court construes as a motion for a certificate of appealability under Circuit Rule 22-1(a) and 28 U.S.C. § 2253(c). Petitioner seeks a certificate of appealability with respect to the Court's adoption of United States Magistrate Judge James P. Donohue's Report and Recommendation ("R&R") denying Petitioner's habeas petition under 28 U.S.C. § 2255. Having reviewed Petitioner's motion and the full record in this case, the Court hereby finds and rules as follows.

Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may not issue unless the applicant has made a "substantial showing of the denial of a constitutional right." In adopting the R&R, this Court found that Magistrate Judge Donohue correctly determined that Petitioner had failed to present any meritorious constitutional arguments with regard to his plea agreement and sentence. (Dkt. No. 34.)

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1 Specifically, the Court adopted the R&R's findings that Petitioner (1) had failed to raise on direct appeal  
2 his claim that his 1981 conviction could not be used as a sentence enhancement, and (2) had been  
3 incarcerated on that prior conviction within fifteen years of his commencement of the instant offense.  
4 (Dkt. No. 34 at 2–3.) Petitioner presents no new grounds in support of his motion for a certificate of  
5 appealability.

6 Accordingly, this Court finds that Petitioner has not met his burden under § 2253(c) and hereby  
7 DENIES Petitioner's motion for a certificate of appealability. Petitioner's request for appointment of  
8 appellate counsel is DENIED AS MOOT.

9 SO ORDERED this 1st day of March, 2006.

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11 A handwritten signature in black ink, appearing to read "John C. Coyner", is written over a horizontal line.

12 UNITED STATES DISTRICT JUDGE  
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